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JUL 08 2004

In re Application of
Moises Calderon
Application No. 10/768,728
Filed: January 29, 2004
Attorney Docket No. N/A

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OFFICE OF PETITIONS

**DECISION GRANTING
PETITION**

This is a decision on the petition filed April 20, 2004, requesting that the above-identified application be accorded a filing date of January 29, 2004, rather than the presently accorded date of January 30, 2004. The petition is properly treated as a petition under 37 CFR 1.10(d).

The petition is **GRANTED**.

Applicant requests the earlier filing date on the basis that the application was purportedly deposited with Express Mail Service on January 29, 2004 pursuant to 37 CFR 1.10. Applicants are alleging that the date of mailing shown in the "date-in" is a U. S. Postal Service (USPS) error and the correct date of mailing pursuant to 37 CFR 1.10 is January 29, 2004. While the copy of the Express Mail label receipt no. EV373381201US bears a handwritten "date-in" of January 30, 2004, petitioner has provided a copy of the USPS' Express Mail Track and Confirm Database which shows that the package in question was "enroute from Springfield, MA to Virginia on January 29, 2004." To further support petitioner's allegations, a letter from the USPS confirms that the package was, in fact, deposited with the USPS on January 29, 2004.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "date-in" on the Express Mail label, MPEP 513. However, in view of the conflicting dates on the label and the results from the USPS' Express Mail Track and Confirm database, petitioner has provided sufficient evidence to confirm that the package bearing Express Mail label No. EV373381201US was accepted on January 29, 2004.

This application file is being returned to the Office of Initial Patent Examination Division for **correction of the filing date to January 29, 2004.**

Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.

A handwritten signature in black ink that reads "Brian Hearn". The signature is written in a cursive style with a large, stylized "B" and "H".

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy